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In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

What Constitutes Doing Business

Broadcasting Corporations

There appear to be no decisions in which the question of the necessity of the qualification of a foreign broadcasting company was directly before the courts. The Attorney General of Ohio in 1935 rendered an opinion to the Secretary of State carrying the following syllabus:

> "A foreign corporation engaged in the business of broadcasting radio programs in this state is engaged solely in interstate commerce and exempt from the provisions of the foreign corporation act as contained in Sections 8625-1, et seq., of the General Code."

In that instance, the only Ohio station which the foreign broadcasting company operated was owned by an Ohio corporation, all of the stock of which was owned by the foreign company, which leased the facilities from its subsidiary. The Ohio station was one of 20 stations located in 14 states which comprised the basic network of the foreign broadcasting corporation.

The State of Washington excise tax imposed at the rate of 1% of the gross income of "every person engaging in or continuing within this state in the business of radio broadcasting," was held invalid when levied upon the gross receipts of a broadcasting company's entire operations, which included interstate commerce. Since none of the taxed income was allocable to intrastate commerce, the tax as a whole was held, by the Supreme Court of the United States, to fail as to such a company. (*Fisher's Blend Station, Inc. v. The Tax Commission et al.*, 56 S. Ct. 608, 297 U. S. 650.) The court said:

> "By its very nature broadcasting transcends state lines and is national in its scope and importance—characteristics which bring it within the purpose and protection, and subject it to the control of the commerce clause."

Municipal ordinances imposing local license taxes were similarly held to be invalid when applied to such companies in *Whitehurst v. Grimes et al.*, 21 F. 2d 787, and *City of Atlanta v. Atlanta Journal Co.*, 186 Ga. 734, 198 S. E. 788.

In *Hoffman v. Carter*, 187 A. 576, 192 A. 825, a foreign broadcasting company which furnished radio programs to a subsidiary corporation which, in turn, broadcast the programs through its facilities in New Jersey, was held not to be doing business in New Jersey so as to bring the parent company within the jurisdiction of New Jersey.

Domestic Corporations

Delaware.

State Supreme Court reverses order of Chancery Court appointing appraisers, under Section 61, on application of beneficial owners of stock of merging corporation, ruling registered holder to be the "stockholder" contemplated by that section. In *Schenck v. The Salt Dome Oil Corporation*, 34 A. 2d 249, (The Corporation Journal, December, 1943, page 54), the Court of Chancery, New Castle County, ruled that the beneficial owner of stock was not required to be a record holder in order to be a "stockholder" within the meaning of Section 61 of the Delaware Corporation Law, entitled "Consolidation or Merger; Payment for Stock of Dissatisfied Stockholder." Complainants were joint beneficial owners and holders of stock in two merging corporations, which were registered in other names, the certificate being duly endorsed in blank by the recordholders, whose signatures "were duly guaranteed." Complainants had sought to assert rights as stockholders under Section 61, with a view of having the stock appraised. The Court of Chancery had held that the statute was to be liberally construed, being for the protection of objecting shareholders and ruled that complainants were to be regarded as stockholders under the section, though their names did not appear on the records as stockholders. Upon appeal, the Delaware Supreme Court has reversed an order of the lower court appointing appraisers. It found the question of the right of such a stockholder to demand appraisal and payment, and to sue at law upon non-payment, an open one in Delaware, although dicta to the contrary existed in the decisions. After a review of the Delaware law and the decisions of Delaware and other states related to the question, the court expressed this conclusion: "We are of opinion that an unregistered holder of stock is not a 'stockholder' entitled to intervene in intracorporate matters unless that status is given him expressly or by unavoidable intendment; and, consequently, only the registered holder of stock is a 'stockholder' within the sense of the word as used in Section 61 of the law, entitled to object to a proposed agreement of merger." *The Salt Dome Oil Corporation v. Schenck et al.*, Delaware Supreme Court, February 5, 1945. Caleb S. Layton of Richards, Layton & Finger, of Wilmington (Schofield Andrews and Ballard, Spahr, Andrews & Ingersoll of Philadelphia, of counsel), for the appellant. William S. Potter and Collins J. Seitz of Southerland, Berl & Potter, for the appellees. Commerce Clearing House Court Decisions Requisition No. 335604.

New York.

Two amendments of Sec. 61, Gen. Corp. Law, by 1944 legislation, ruled cumulatively effective. The 1944 Legislature twice amended Section 61 of the General Corporation Law, through Chapters 667 and 727. Chapter 667 added a third paragraph, reading: "In any action brought by a shareholder in the right of a foreign or domestic corpo-

ration it must be made to appear that the plaintiff was a stockholder at the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law." This Chapter became effective April 9, 1944. Chapter 727, which became effective the following day, did not contain the third paragraph added by Chapter 667. The maintenance of a stockholder's derivative action being dependent upon whether the amendment by Chapter 727 amended Section 61 so as to eliminate therefrom the addition of the third paragraph above quoted, the New York Supreme Court, Special Term, Kings County, ruled that the paragraph was not eliminated, observing: "One statute is not generally deemed to repeal another without express words of repeal, unless the two are so repugnant to one another that both cannot be given effect." Also: "There is nothing repugnant between both amendments so as to effectuate a repeal by implication." *Loew v. Interlake Iron Corporation et al.*, 51 N. Y. S. 2d 779. Davis, Polk, Wardwell, Sunderland & Kiendl (Ralph M. Carson, of counsel), of New York City, for the motion. Koenig, Siskind & Drabkin (Zenaida Drabkin, of counsel), of New York City, opposed.

Virginia.

Restrictive charter and by-law provisions, requiring unanimous consent of stockholders to actions taken by board of directors, ruled contrary to common law and statute. The charter of the Virginia corporation of which defendants were officers contained the following provision: "Any matter concerning the administration and management of the affairs of the corporation, and the control or regulation thereof, which in the due course of the transaction of the business and affairs of the corporation is determined by the vote of the stockholders entitled to vote by stock, in person or by their proxy, shall only be determined by the unanimous vote of the outstanding stock entitled to vote, nor shall any act of the board of directors be binding upon the corporation, or the stockholders, unless ratified by the unanimous vote of all the outstanding stock entitled to vote." The by-laws included this provision: "The Class 'A' common stock shall have the sole voting power, but no act of the stockholders shall be valid or binding upon the corporation or the stockholders unless such Class 'A' stock is voted unanimously, nor shall any act of the board of directors be binding upon the corporation or upon the stockholders unless the acts of the board of directors are ratified by all the holders of the outstanding Class 'A' common stock." In the lower court, Block, a former treasurer against whom charges had been preferred and who had been removed from office by the directors, sought by mandamus proceedings to compel the company's president and the present treasurer to admit him to his office as secretary and treasurer of the company and to deliver to him all proper books and papers. A writ of mandamus was issued by the lower court. This action was reversed by the Supreme Court of Appeals of Virginia, which made the following observations: "Under the charter and by-laws no

action of the board of directors which is not approved by the stockholders is effective; and to make bad matters worse, it must not only be approved by them but must be unanimously approved by them." "A board of directors whose every act must be endorsed by every stockholder is no board at all." "To ask that directors be divested of all power and that without the consent of every stockholder no one should have power to do anything is to ask too much." The charter and by-law provisions were, therefore, viewed as violating both common and statute law and as "suicidal of corporate existence." *Kaplan et al. v. Block*, 31 S. E. 2d 893. Albert V. Bryan of Alexandria and Alfred A. Hilton of Arlington, for plaintiffs in error. T. Munford Boyd of Richmond, James H. Simmonds of Arlington and Nathan Patz of Baltimore, Md., for defendant in error.

Wisconsin.

Accumulated dividends on retired preferred stock held not payable out of remaining assets, where capital was impaired. Plaintiffs, as preferred stockholders, brought this action against their corporation for a declaratory judgment determining the respective rights of the holders of the preferred stock and the holders of the common stock in and to the corporate assets. The liquidation of the preferred stock was begun on February 1, 1928, when a 10 per cent payment was made on that stock and payment of all accumulated dividends to that date on said 10 per cent of the preferred stock of the company was authorized. Similar payments on the preferred stock were continued at intervals. A payment made on January 18, 1944, had the effect of retiring all of the preferred stock at par and reimbursing the holders for all accumulated dividends up to and including February 1, 1930, the payments on the accumulated dividends not having been made after that date, since, after that date, there had been no surplus available for dividends. On January 18, 1944, accrued dividends which remained unpaid amounted to $74,945.37. There were then no net earnings or profits available for further payment of accrued dividends on the preferred stock, and, with the company's remaining assets amounting to only $111,510.62, its common stock had become impaired to a large extent. Defendant had refused the demand of plaintiffs and other preferred stockholders that the accumulated dividends be paid out of the remaining assets. Defendant had demurred to the complaint on the ground that it did not state facts sufficient to constitute a cause of action and the lower court had ordered the demurrer sustained. This order was affirmed by the Supreme Court of Wisconsin, which stressed statutory provisions to the effect that no dividend should be declared or paid except out of net profits properly applicable thereto and which should in no way impair or diminish the capital and that no stock should bear interest. Answering a contention of plaintiffs that defendant and its common stockholders in equity were estopped to deny to the preferred stockholders payment of either the unpaid accumulated dividends or the equivalent thereof as interest on their investment, and that defendant retired its preferred stock

under circumstances requiring payment of the accumulated dividends as a premium or condition of retirement, the court remarked that "the legal effect and consequences of the statutory limitations can not be avoided or defeated by invoking the doctrine of estoppel, or be circumvented by designating as 'interest' or 'premium' the amount of the unpaid accumulated dividends, which plaintiffs seek to have paid out of defendant's capital assets." *Welch et al. v. Land Development Co.*, 16 N. W. 2d 402. Wood, Warner, Tyrrel & Bruce of Milwaukee, for appellants. Miller, Mack & Fairchild and Paul R. Newcomb of Milwaukee, for respondent.

Foreign Corporations

District of Columbia.

Foreign corporation, with Washington office in charge of a "correspondent" who transmitted news, for publication, to home office outside District, held not amenable to process. Defendant foreign corporation moved to quash service of summons upon it in a suit for damages on account of an alleged libel. The statute invoked to support the service, D. C. Code 1940, Sec. 13-103 (24:373), provided for the method of service "in actions against foreign corporations doing business in the District." The District Court of the United States for the District of Columbia referred to the "long accepted principle that a foreign corporation is amenable to process to enforce a personal liability only if it is 'doing business' within the state in such a manner and to such an extent as to warrant the inference that it is present there." Defendant maintained a Washington office for the collection of news which it transmitted, for publication, to its home office located outside the District of Columbia, the Washington office being in charge of a "Washington correspondent." Referring to the statute, the court concluded, in conformity with governing decisions in the jurisdiction, that the defendant's newspaper actively did not amount to "doing business" in the District in the technical sense referred to and granted defendant's motion to quash the service. *Bilbrey v. The Chicago Daily News, a corporation*,* United States District Court for the District of Columbia, January 29, 1945. Geo. E. Sullivan of Washington, for plaintiff. Spencer Gordon of Washington, for defendant. Commerce Clearing House Court Decisions Requisition No. 333843.

* The full text of this opinion is printed in **The Corporation Tax Service**, District of Columbia, page 304.

Minnesota.

Attempted service upon licensed foreign corporation by serving officer of independent company to which sales were made under conditional sales contract, ruled void. Defendant was a Wisconsin corporation, duly licensed and qualified to do business in Minnesota.

It maintained a registered office in Minneapolis, in charge of its resident agent and branch manager, who was duly authorized to accept service on its behalf. No such service was made upon him, but service of process was attempted by leaving process with the secretary of an independent company, which made purchases from defendant under a conditional sales contract, on the theory that this customer was defendant's agent. Defendant appeared specially and moved to set aside the service. This motion was denied by the lower court. This judgment was reversed by the Supreme Court of Minnesota, which ruled that the attempted service was null and void, as the company served was never at any time authorized to represent defendant in Minnesota for the service of process, or otherwise, and had never been appointed to a position of representative capacity and authority for defendant, and that the attempted service did not constitute compliance with the statutory provisions governing service of process upon foreign corporations. *Nurmi v. J. I. Case Co.*, 17 N. W. 2d 79. Fowler, Youngquist, Furber, Taney & Johnson of Minneapolis, and Field & Field of Fergus Falls (Clark M. Robertson and Howard R. Johnson of Milwaukee, Wis., of counsel), for appellant. Dell & Rosengren of Fergus Falls, for respondent.

New York.

Court of Appeals rules on service of process upon two California corporations. A recent decision of the Court of Appeals of New York concerned the validity of service of process, in a stockholders' derivative action, upon two California defendant corporations. One corporation, at the time of service maintained an office in New York City, where it had a bank account. Its name was listed in the telephone directory and in a trade almanac. The company actively solicited business, had three employees in its office who furthered the purchase for the corporation, as agent for other corporations, of literary products and scripts and the obtaining of contracts with actors and actresses. This company was regarded as doing business in New York to such an extent as to subject it to service of process there. The second California company, upon which service was questioned, had been formally dissolved eight months prior to service. The findings of the courts below, that it was still doing business in New York at the time of service, were based on the showing that its name continued to be listed until after the time of service in the telephone directory and in the directory of tenants in the lobby of the building where it had formerly had an office under lease. "Such a showing," said the Court of Appeals, "is not enough." The inquiry being solely as to whether the company was still doing business in New York State at the time of service, the court ruled in the negative. *Chaplin v. Selznick et al.*, 293 N. Y. 529, 58 N. E. 2d 719. Lowell Wadmond and Chester Bordeau of New York City, for defendants-appellants appearing specially. Louis D. Frohlich and Herbert P. Jacoby of New York City, for respondent.

Taxation

Colorado.

Colorado corporation, with its only office and manufacturing plant in state, where all of its property was located, held subject to income tax upon its entire net income, both intrastate and interstate. In *The Stayput Clamp & Coupling Co. v. Cruse,* (The Corporation Journal, December, 1944, page 252), the District Court of the City and County of Denver held that a Colorado company, engaged in both intrastate and interstate business, was taxable only on the apportioned income attributable to business transacted wholly within Colorado, under the Colorado State income tax. Upon appeal, this judgment has been reversed by the Colorado Supreme Court. The higher court held that the corporation, which maintained its only office and manufacturing plant at Denver, Colorado, which had all of its property in that state and filled orders, approved in Denver, by shipping goods to customers elsewhere, was subject to a tax, under the Colorado income tax law, upon its entire net income. *Stayput Clamp & Coupling Co. v. Cruse,** Colorado Supreme Court, February 2, 1945. Gail L. Ireland, Attorney General; H. Lawrence Hinkley, Deputy Attorney General, and George K. Thomas, Assistant Attorney General, for plaintiffs in error Chas. E. Friend, for defendant in error. Commerce Clearing House Court Decisions Requisition No. 334639.

* The full text of this opinion is printed in **The Corporation Tax Service, Colorado, page 1511.**

Indiana.

Suit in federal court to recover state gross income taxes ordered dismissed for want of consent by state to suit. In *Ford Motor Co. v. Department of Treasury et al.,* 141 F. 2d 24, (The Corporation Journal, November, 1944, page 233), the United States Circuit Court of Appeals, Seventh Circuit, in a suit for the refund of Indiana gross income taxes paid by a foreign corporation, upheld an assessment of the tax under the following circumstances: Automobiles, manufactured and assembled by the petitioner corporation at points outside of Indiana, were carried by trucking companies from these points into Indiana and delivered to Indiana dealers, who paid for them to the employees of the trucking company for transmittal to the manufacturer, payment being made either in cash or by means of finance papers, or both. Upon appeal, the Supreme Court of the United States vacated the judgment of the Circuit Court of Appeals and remanded the cause to the District Court with directions to dismiss the complaint for want of consent by the state to the suit, which had been brought by the corporation to recover gross income taxes paid on the automobiles sold to the Indiana dealers. The Supreme Court limited its opinion to the petitioner's right to maintain its action, observing: "Petitioner's right to maintain this action in a federal court depends first, upon whether the action is against the State of Indiana or against an

It's easy enough to designate a company-employe as the company's statutory agent, and his address as the statutory office. But not so easy to be sure he'll always be there. That's the rub—when a company's statutory agent can't be found at the designated address, the company might almost as well have had no agent at all. Safe statutory representation is Corporation Trust representation.

individual. Secondly, if the action is against the state, whether the state has consented to be sued in the federal courts." The court reached the conclusion that the suit, being an action against the Department and the officers constituing the board of the Department of Treasury, constituted a suit against the State of Indiana. The court noted that the Eleventh Amendment to the Federal Constitution expressly denies to the federal courts authority to entertain a suit brought by private parties against a state without its consent. It was noted also that the sections of the Indiana statutes permitting a taxpayer to recover amounts improperly collected confined suits against the state to state courts and contained no clear indication that the state intended to consent to suit in federal courts. It was also concluded that the state had not, by statute, permitted the Attorney General to waive its immunity to suit in the federal courts. *Ford Motor Co. v. Department of Treasury of Indiana et al.,** 65 S. Ct. 347. Merle H. Miller of Indianapolis, for petitioner. John J. McShane and Winslow Van Horne of Indianapolis, for appellees.

* The full text of this opinion is printed in **The Corporation Tax Service, Indiana, page 1406.**

North Carolina.

Compensating Use Tax held valid. "Plaintiff maintains a place of business in Charlotte, N. C., conducted under a trade name of his own choosing. His business is to sell tailor-made clothing on commission. His method is to take orders, make the necessary measurements and forward the order to the tailoring company which furnished the sample selected by the customer. It does not appear that orders were subject to acceptance by the tailoring companies. Plaintiff collects a 'down payment' which ordinarily is less than his full commission. The tailoring companies with which plaintiff is associated and to which he sends orders periodically make settlement with plaintiff for unpaid commissions due." The questions raised were concerned with whether plaintiff could be regarded as a "retailer" subject to the Compensating Use Tax provided for by G. S. Ch. 105, Art. 8, Schedule I, and if so, whether the tax was a tax imposed upon the privilege of doing interstate business. The Supreme Court of North Carolina ruled that plaintiff came within the statutory definition of a retailer, since he "made sales of tangible personal property for storage, use or consumption in the State." "The Act," said the court, "clearly constitutes the plaintiff an agent for the collection of the tax and renders him liable for failure to do so. This was a proper exercise of the legislative function." Plaintiff contended that even though, under the terms of the Act, he was liable for the tax imposed, it was not collectible for the reason that it imposes a burden on interstate commerce. The court, after inquiry into the nature of the tax, its purpose and its operation, concluded that it was properly to be classified as a use tax and that, under controlling decisions of the Supreme Court of the United States, it was not open to attack on constitutional

grounds, stressing that "a use tax is a tax on the enjoyment of that which was purchased after a sale has spent its interstate character." *Johnston v. Gill*,* 32 S. E. 2d 30. Murray Allen of Raleigh and Thaddeus A. Adams of Charlotte, for plaintiff appellant. Harry McMullan, Attorney General, and William J. Adams, Jr., Asst. Atty. General, for defendant appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, North Carolina, page 7513.

Pennsylvania.

Qualified foreign holding corporation, conducting all of its business in Pennsylvania, except collection of rents on property in another state where informal directors' meetings were held, ruled doing business for purposes of franchise tax. A Delaware holding company, authorized to do business in Pennsylvania, carried on all of its activities in Pennsylvania except the collection of rents on Massachusetts real estate owned by the company and the holding of informal directors' meetings in Massachusetts. The question raised was whether the corporation was doing business in the state so as to be subject to the franchise tax. The Court of Common Pleas, Dauphin County, enumerated the various activities of the company in Pennsylvania, which included the keeping of securities there, the receipt of dividends and interest, as well as the payment of dividends, the filing of Federal and Pennsylvania tax returns and payment of these taxes from its office in Pennsylvania and the making of decisions for the sale of securities, among other things. "The doing of each one of these things," remarked the court, "was not a phantom or a fantasy. It was a thing of substance. It was doing an act of business. The aggregate of them all constituted doing the corporate business, which was within its charter powers, and which it had secured the right to do, and elected to do, in Pennsylvania under the protection of our laws." Exceptions to an opinion rendered by the court on July 31, 1944,* were overruled and a judgment for the tax, previously entered, was affirmed. *Commonwealth of Pennsylvania v. Eaglis Corporation*, Court of Common Pleas, Dauphin County, January 29, 1945. Commerce Clearing House Court Decisions Requisition No. 334237.

* The full text of these opinions is printed in **The Corporation Tax Service**, Pennsylvania, pages 825 and 840.

Value of capital stock for franchise tax purposes held not to be limited to that portion related to activities of unitary enterprise carried on in state. Appellant Ford Motor Company, a Delaware corporation, licensed to do business in Pennsylvania, was authorized by its charter to engage in a wide variety of business activities and it engaged in a vast network of industrial and mercantile operations, owning and operating mines, quarries and timber tracts, manufacturing many products and operating a railroad and a fleet of vessels. In Pennsylvania, it owned and operated an assembly plant, where

parts shipped from outside the state were used in the final step of manufacturing Ford automobiles. Two sales and service depots were maintained in the state, in addition to a building used for storage and display of its products. In lieu of the amount the court below found to be the entire value of appellant's capital stock, prior to its division into thirds for the purpose of applying the appropriate three allocation fractions, the appellant sought to substitute an amount representing the value of that portion only of its entire capital stock devoted to the functions which it carried out in Pennsylvania. In affirming the judgment of the lower court, the Pennsylvania Supreme Court remarked: "The fallacy of appellant's major premise is apparent. It appears to be extremely arbitrary to divide its manufacturing operations into three distinct and 'unrelated' functions, segregating, for instance, the function of assembly, which appellant concedes to be the last phase or final step in the process of manufacture, from the first and intermediate phases. The chief difficulty with appellant's premise is, however, that it is completely contrary to the evidence presented and to the findings of fact of the court below, which, being supported by the record, must be given their customary conclusive effect." The fact that appellant was engaged in a unitary enterprise was emphasized, the entire capital being devoted to the manufacture and sale of its automotive products. Appellant also urged that, in arriving at the value of its entire capital stock, the book value of the stock of its wholly owned subsidiaries had erroneously been included. In upholding their inclusion, the court said: "That portion of appellant's capital invested in these stocks is no less a part of its working capital because the stocks are wholly owned by appellant." *Commonwealth of Pennsylvania v. Ford Motor Co.*,* 38 A. 2d 329. Hull, Leiby & Metzger of Harrisburg; Reed, Smith, Shaw & McClay and Wm. A. Seifer of Pittsburgh, for appellant. H. F. Stambaugh, Special Counsel, and James H. Duff, Attorney General, for appellee. Commerce Clearing House Court Decisions Requisition No. 325077. (*Petition for certiorari filed in the Supreme Court of the United States, January 26, 1945; Docket No. 872.*)

* The full text of this opinion is printed in **The Corporation Tax Service, Pennsylvania, page 813.**

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 40. *Hewit v. Freeman,* 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to nonresidents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944.**

INDIANA. Docket No. 75. *Ford Motor Co. v. Department of Treasury et al.,* 141 F. 2d 24. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—income from sales made on orders accepted, goods manufactured, and deliveries made to dealers, outside of Indiana. **Petition for certiorari filed, May 3, 1944. Certiorari granted, May 29, 1944. Argued, December 7, 1944. Judgment of the Circuit Court of Appeals vacated and cause remanded to the United States Southern District Court of Indiana with directions to dismiss the complaint for want of consent by the State to the suit, January 8, 1945.** (See page 329.)

NORTH DAKOTA. Docket No. 927. *Asbury Hospital v. Cass County et al.,* 16 N. W. 2d 523, which followed ruling in *Asbury Hospital v. Cass County et al.,* 7 N. W. 2d 438. (The Corporation Journal, October, 1942, page 232.) Constitutionality of North Dakota statute prohibiting corporation farming—application to non-profit hospital corporation. **Appeal filed, February 6, 1945. Probable jurisdiction noted and case transferred to the summary docket, March 5, 1945.**

OHIO. Docket No. 38. *The Hooven & Allison Company v. Evatt,* 51 N. E. 2d 723. (The Corporation Journal, February, 1944, page 111.) Ohio general property tax levied against goods grown in foreign country and transshipped by seller's agent from port of entry to buyer in Ohio. **Petition for certiorari filed, March 11, 1944. Certiorari granted, April 10, 1944. Argued, November 7 and 8, 1944.**

PENNSYLVANIA. Docket No. 872. *Commonwealth of Pennsylvania v. Ford Motor Company,* 38 A. 2d 329. (The Corporation Journal, April, 1945, page 333.) Franchise tax—unitary business. **Petition for certiorari filed January 26, 1945. Motion to dismiss granted and appeal dismissed, per curiam, for want of a substantial Federal question, March 12, 1945.**

PENNSYLVANIA. Docket No. 873. *Commonwealth of Pennsylvania v. Quaker Oats Company,* 38 A. 2d 325. (The Corporation Journal, November, 1944, page 235.) Franchise tax—gross receipts allocation—sales offices in state—approval out of state. **Petition for certiorari filed January 26, 1945. Motion to dismiss granted and appeal dismissed, per curiam, for want of a substantial Federal question, March 12, 1945.**

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* Data compiled from **CCH U. S. Supreme Court Service, 1944-1945.**

Regulations and Rulings

CALIFORNIA—The State Board of Equalization has recently completely revised the Sales and Use Tax Regulations. The revision correlates all of these rulings with the law provisions of the Revenue and Taxation Code and embodies interpretations of the rulings heretofore promulgated. (California CT (Corporation Tax) Service, ¶ 64-000 et seq.)

GEORGIA—Kerosene combined with other liquid fuels to form a motor fuel is taxable at one cent per gallon and the resultant fuel, including the kerosene, when used to propel motor vehicles on the highways, is taxable at six cents. (Opinion of Attorney General to Commissioner of Revenue, Georgia CT, ¶ 44-002.)

LOUISIANA—The Sales and Use Tax Regulations have recently been revised by the Department of Revenue. (Louisiana CT, ¶ 60-000.)

NEW YORK CITY—Retail stores and others who purchase pin tickets containing information regarding size, selling price, etc., of a garment are deemed to be the ultimate consumers and must pay the sales tax on such items. (Ruling of Special Deputy Comptroller, New York CT, ¶ 220-257.)

NORTH CAROLINA—The franchise tax return must reflect the value of the corporation's capital stock, surplus and undivided profits as of the close of its last fiscal or calendar year next preceding July 31 of the year in which the report is due. The sentence contained in Section 201 of the Revenue Act which states "The taxes levied in this article or schedule shall be for the fiscal year of the state in which said taxes became due" has no reference to the time for valuing a corporation's capital stock, surplus and undivided profits for the franchise tax base but, rather, relates to the time that the franchise taxes, once determined, become due and to the period which they cover. (Opinion of the Attorney General to the Commissioner of Revenue, North Carolina CT, ¶ 15-009.)

OREGON—The due date of the first quarter of current personal property taxes, assessed as of the preceding January first, is November fifteenth. Any and all taxes on personal property shall become delinquent when any quarter thereof, or other specified installment, shall not have been paid on or before its due date. Taxes on personal property shall be a lien on all personal property of the person assessed from and including the first day of January of the year of assessment until paid. No sale or transfer of such property shall in any way affect such lien. (Opinion of Attorney General, Oregon CT, ¶ 23-401.)

TEXAS—A corporation whose right to do business was forfeited in 1941 for failure to pay a balance of franchise taxes which accrued on May 1, 1941, is required to pay an additional amount of 5% per month revival fee on the franchise taxes which accrued on May 1, 1942, May 1, 1943 and May 1, 1944, under the provisions of Art. 7092, R. C. S., 1925. (Opinion of Attorney General to Secretary of State, Texas CT, ¶ 15-028.)

Some Important Matters for April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1944.

DISTRICT OF COLUMBIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MARYLAND—Annual Report (Personal Property Return) due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Franchise Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MINNESOTA—Returns of Withholding at the source due on or before April 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15 and delinquent after June 1.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before May 15.—Domestic Corporations.

NEW MEXICO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

PENNSYLVANIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Annual Report due between May 1 and June 1.—Domestic Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before April 30.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

Income Tax due June 1.—Domestic and Foreign Companies.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Cross Hauling . . . and the Answer, Spot Stocks. Explains how the possible wartime restrictions on cross-hauling point the way to volunteer peacetime economies through the keeping of warehouse stocks at strategic shipping points.

Amendments to Delaware Corporation Law, 1943. Contains complete text of the amendments adopted at the 1943 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

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Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK 5, N. Y.

THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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